

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 ROBERT "BOB" BURNS – Chairman
4 BOYD DUNN
5 SANDRA D. KENNEDY
6 JUSTIN OLSON
7 LEA MÁRQUEZ PETERSON

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA PUBLIC SERVICE COMPANY FOR A
10 HEARING TO DETERMINE THE FAIR VALUE OF
11 THE UTILITY PROPERTY OF THE COMPANY
12 FOR RATEMAKING PURPOSES, TO FIX A JUST
13 AND REASONABLE RATE OF RETURN
14 THEREON, TO APPROVE RATE SCHEDULES
15 DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. E-01345A-19-0236

PROCEDURAL ORDER
(Grants Admission Pro Hac Vice)

11 **BY THE COMMISSION:**

12 On October 1, 2019, Arizona Public Service Company ("APS") filed with the Arizona
13 Corporation Commission ("Commission") a Notice of Intent to File a Rate Case Application and
14 Request to Open Docket. As a result, this docket was opened.

15 On October 9, 2019, a Procedural Order regarding Consent to Email Service was issued.

16 On October 31, 2019, APS filed its Rate Application.

17 On November 1, 2019, Richard Gayer filed an Individual Request for Intervention.

18 On November 5, 2019, The Kroger Co. ("Kroger") filed a Petition for Leave to Intervene.

19 Also on November 5, 2019, Southwest Energy Efficiency Project ("SWEEP") filed an
20 Application for Leave to Intervene.

21 On November 6, 2019, Western Resource Advocates ("WRA") filed an Application for Leave
22 to Intervene.

23 On November 7, 2019, Freeport Minerals Corporation ("Freeport") and Arizonans for Electric
24 Choice and Competition ("AECC") jointly filed an Application for Leave to Intervene.

25 On November 12, 2019, SOLON Corporation ("SOLON") filed a Motion to Intervene.

26 On November 18, 2019, Mr. Gayer filed a Motion to Prohibit Settlement Conference and
27 Settlement Agreement and Demand Litigation, specifically requesting that all issues impacting
28 residential customers be fully litigated.

1 On November 19, 2019, by Procedural Order, intervention was granted to Mr. Gayer, Kroger,
2 SWEEP, WRA, Freeport, and AECC.

3 On November 22, 2019, the Residential Utility Consumer Office ("RUCO") filed a Motion to
4 Intervene.

5 On November 25, 2019, APS filed its Initial Response to Mr. Gayer's Motion to Prohibit
6 Settlement, Etc. ("Gayer Motion"), stating that it opposed both the substance and timing of Mr. Gayer's
7 Motion, given that the status of this matter is in the very preliminary stages, and that the Motion should
8 not be considered at this juncture.

9 On November 26, 2019, the Property Owners and Residents Association of Sun City West
10 ("PORA") filed an Application to Intervene. PORA included a Resolution designating Director Bob
11 Miller and President Ralph Johnson as PORA's representatives.

12 On November 27, 2019, by Procedural Order, intervention was granted to SOLON.

13 On November 29, 2019, the Commission's Utilities Division ("Staff") filed a Letter of
14 Sufficiency, stating that APS's rate application has met the sufficiency requirements as outlined in
15 Arizona Administrative Code ("A.A.C.") R14-2-103(B)(7) and that APS has been classified as a Class
16 A Utility.

17 On December 2, 2019, Mr. Gayer filed a Reply on Motion to Prohibit Settlement, Etc., stating
18 that Mr. Gayer's Motion did not request resolution of any issue herein at this time, only that all issues
19 be resolved as part of litigation conducted in public and streamed live via the Commission's website.

20 On December 2, 2019, by Procedural Order, a procedural conference was scheduled for
21 December 9, 2019, and RUCO's Application for Intervention was granted.

22 On December 3, 2019, Arizona Competitive Power Alliance ("ACPA") filed an Application
23 for Leave to Intervene.

24 On December 6, 2019, Wildfire filed an Application for Leave to Intervene.

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1 Also on December 6, 2019, Mr. Gayer filed a Document entitled Proposed Rules and
2 Procedures for Litigation.¹

3 Additionally, on December 6, 2019, Staff filed a Notice of Filing a proposed procedural
4 schedule and a Revised Notice of Filing a proposed procedural schedule. Staff's proposed procedural
5 schedule included a hearing to commence on September 14, 2020.

6 On December 9, 2019, the Procedural Conference was held as scheduled with APS, SWEEP,
7 WRA, Freeport, AECC, RUCO, ACPA, Wildfire, and Staff appearing through counsel and Mr. Gayer
8 appearing pro se. Several potential intervenors were also represented. During the procedural
9 conference, intervention was granted to PORA, ACPA, and Wildfire without objection. Additionally,
10 the Gayer Motion was considered and denied, and discussions were held concerning Staff's proposed
11 procedural schedule as well as party access to APS discovery requests and responses. The parties
12 generally supported a schedule that would provide 6 weeks for Staff/Intervenor surrebuttal testimony
13 to be filed; would include public comment sessions in Phoenix, Flagstaff, and Yuma; would have a
14 hearing commence on September 28, 2020; and would establish a deadline for discovery requests
15 approximately five days before the first day of hearing. APS agreed to have the Commission's Decision
16 timeclock deadline extended to accommodate the hearing beginning in late September. There was also
17 general agreement that the hearing is likely to take three to four weeks. At the conclusion of the
18 procedural conference, the parties' input was taken under advisement.

19 Also on December 9, 2019, Kroger filed a Motion to Associate Counsel Pro Hac Vice for Kurt
20 J. Boehm. In its Motion, Kroger requested that Kurt J. Boehm be permitted to appear before the
21 Commission as counsel *pro hac vice* for Kroger in this matter. Kroger attached to its Motion Verified
22 Applications for Appearance *Pro Hac Vice*, Certificates of Good Standing, and Notices of Receipt of
23 Complete Application from the State Bar of Arizona for both Kurt J. Boehm and Jody Kyler Cohen.
24 Although Kroger's Motion does not request that Ms. Kyler Cohn be admitted *pro hac vice*, we consider
25 Kroger to have made such a request by virtue of the inclusion of the other appropriate paperwork for
26 Ms. Kyler Cohen.

27
28 ¹ Mr. Gayer also again filed the Gayer Motion.

1 On December 12, 2019, at its Staff Open Meeting, the Commission discussed the procedural
2 schedule for this matter, including what would be necessary to have the Recommended Opinion and
3 Order produced for consideration by the Commission at an Open Meeting in October or November
4 2020. The Hearing Division discussed the typical timeline for processing a Class A rate case and
5 provided background information on processing times of previous APS rate cases. The Hearing
6 Division was directed to provide the background information in writing along with three different
7 scenarios to accomplish consideration at an Open Meeting in 2020.

8 On December 13, 2019, the Hearing Division filed a Memorandum regarding the Procedural
9 Schedule for this matter, providing the information requested by the Commission at the Staff Open
10 Meeting.

11 Also on December 13, 2019, Staff filed correspondence providing information “crucial to the
12 consideration of an expedited case processing timeline” for this matter. Staff included a copy of the
13 Request for Proposal (“RFP”) issued by Staff on November 8, 2019, in response to which Staff received
14 only one bid that did not propose to address all of the work elements in the RFP. Staff stated that the
15 responding consultant did not propose to complete the review of the Cost of Service Study, the
16 Engineering Analysis, and the evaluation of Rate Design. Staff stated that it may need to seek out a
17 consultant to complete these work elements and that an expedited timeline could also result in a need
18 to issue a new RFP if the responding consultant cannot perform within the timeline due to other
19 commitments.

20 On December 17, 2019, the Commission issued Notice of a Special Open Meeting to be held
21 for the Commission to discuss and possibly vote on the process and procedural schedule for this matter
22 as well as direction to Staff concerning settlement.

23 Kurt J. Boehm and Jody Kyler Cohn have completed all the necessary steps to be admitted *pro*
24 *hac vice* in this matter on behalf of Kroger. Thus, in the discretion of the Commission, it is just and
25 reasonable to admit Kurt J. Boehm and Jody Kyler Cohn *pro hac vice* in this matter as counsel for
26 Kroger.

27 IT IS THEREFORE ORDERED that **Kurt J. Boehm and Jody Kyler Cohn are admitted *pro***
28 ***hac vice*** in the above-captioned matter.

1 IT IS FURTHER ORDERED that the addresses for service of papers and other communication
2 for Kroger are:

3 Kurt J. Boehm
4 Jody Kyler Cohn
5 BOEHM, KURTZ & LOWRY
6 36 E. Seventh Street, Suite 1510
7 Cincinnati, OH 45202
8 kboehm@BKLlawfirm.com
9 jkylercohn@BKLlawfirm.com
10 **Consented to Service by Email**

11 IT IS FURTHER ORDERED that local counsel John William Moore, Jr.'s previous request to
12 be excluded from the service list for paper copies is **hereby granted**.

13 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the**
14 **Commission's website** for information regarding **Global Consent to Email Service² and how to**
15 **Follow the Docket.**³ Information regarding Global Consent to Email Service and how to Follow the
16 Docket is available on the Commission's website (www.azcc.gov) by clicking on "**Cases and Open**
17 **Meetings**" and then clicking on "**Globally Consent to Email Service**" or "**Follow a Docket.**"

18 IT IS FURTHER ORDERED that **documents may be eFiled** in this docket and that instructions
19 and restrictions for eFiling are available on the Commission's website at [http://azcc.gov/hearing/efile-](http://azcc.gov/hearing/efile-for-utilities-instruction)
20 [for-utilities-instruction](http://azcc.gov/hearing/efile-for-utilities-instruction).

21 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
22 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

23 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
25 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
26 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
27 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
28 Law Judge or the Commission.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized

² Global Consent to Email Service allows a party to consent to receive email service in all cases for which the party is included on the service list, now or in the future.

³ The "Follow a Docket" service allows any person to receive email notice, with a link to the filing, whenever something is filed in the docket. The service can be used to follow one or many dockets.

1 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision
2 in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
4 pursuant to Rule 6(a)(2) or (c) of the Arizona Rules of Civil Procedure.

5 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
6 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
7 hearing.

8 DATED this 17th day of December, 2019.

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10 

SARAH N. HARPRING

ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

On this 17th day of December, 2019, the foregoing document was filed with Docket Control as a Procedural Order – Admits an Attorney Pro Hac Vice, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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